

AN ACT

relating to contracting procedures and requirements for governmental entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 531.102, Government Code, is amended by adding Subsections (m-1) and (m-2) to read as follows:

(m-1) If the commission does not receive any responsive bids under Chapter 2155 on a competitive solicitation for the services of a qualified expert to review investigative findings under Subsection (l) or (m) and the number of contracts to be awarded under this subsection is not otherwise limited, the commission may negotiate with and award a contract for the services to a qualified expert on the basis of:

(1) the contractor's agreement to a set fee, either as a range or lump-sum amount; and

(2) the contractor's affirmation and the office's verification that the contractor possesses the necessary occupational licenses and experience.

(m-2) Notwithstanding Sections 2155.083 and 2261.051, a contract awarded under Subsection (m-1) is not subject to competitive advertising and proposal evaluation requirements.

SECTION 2. Section 2054.003(10), Government Code, is amended to read as follows:

(10) "Major information resources project" means:

1 (A) any information resources technology project
2 identified in a state agency's biennial operating plan whose
3 development costs exceed \$5 million and that:

4 (i) requires one year or longer to reach
5 operations status;

6 (ii) involves more than one state agency;

7 or

8 (iii) substantially alters work methods of
9 state agency personnel or the delivery of services to clients;

10 [~~and~~]

11 (B) any information resources technology project
12 designated by the legislature in the General Appropriations Act as
13 a major information resources project; and

14 (C) any information resources technology project
15 of a state agency designated for additional monitoring under
16 Section 2261.258(a)(1) if the development costs for the project
17 exceed \$5 million.

18 SECTION 3. Section 2054.008(b), Government Code, is amended
19 to read as follows:

20 (b) A state agency shall provide written notice to the
21 Legislative Budget Board of a contract for a major information
22 system. The notice must be on a form prescribed by the Legislative
23 Budget Board and filed not later than the 30th [~~10th~~] day after the
24 date the agency enters into the contract.

25 SECTION 4. Section 2054.1181(a), Government Code, is
26 amended to read as follows:

27 (a) The [~~At the direction of the governor, lieutenant~~

1 ~~governor, or speaker of the house of representatives, the]~~
2 department shall provide additional oversight services [~~for major~~
3 ~~information resources projects~~], including risk management,
4 quality assurance services, independent project monitoring, and
5 project management, for major information resources projects
6 described by Section 2054.003(10)(C) and for other major
7 information resources projects selected for oversight by the
8 governor, lieutenant governor, or speaker of the house of
9 representatives. A state agency with a project subject to
10 [~~selected for~~] oversight shall pay for oversight by the department
11 and quality assurance team based on a funding model developed by the
12 department. The department may contract with a vendor to provide
13 the necessary oversight at the department's direction.

14 SECTION 5. Section 2155.074, Government Code, is amended by
15 amending Subsection (b) and adding Subsection (b-1) to read as
16 follows:

17 (b) In determining the best value for the state, the
18 purchase price and whether the goods or services meet
19 specifications are principal considerations that must be balanced
20 with other relevant factors [~~the most important considerations~~].

21 (b-1) The [~~However, the~~] comptroller or other state agency
22 may, subject to Subsection (c) and Section 2155.075, consider the
23 following [~~other~~] relevant factors under Subsection (b),
24 including:

- 25 (1) installation costs;
- 26 (2) life cycle costs;
- 27 (3) the quality and reliability of the goods and

1 services;

2 (4) the delivery terms;

3 (5) indicators of probable vendor performance under
4 the contract such as past vendor performance, the vendor's
5 financial resources and ability to perform, the vendor's experience
6 or demonstrated capability and responsibility, and the vendor's
7 ability to provide reliable maintenance agreements and support;

8 (6) the cost of any employee training associated with
9 a purchase;

10 (7) the effect of a purchase on agency productivity;

11 (8) the vendor's anticipated economic impact to the
12 state or a subdivision of the state, including potential tax
13 revenue and employment; ~~and~~

14 (9) the impact of a purchase on the agency's
15 administrative resources; and

16 (10) other factors relevant to determining the best
17 value for the state in the context of a particular purchase.

18 SECTION 6. Section 2155.075(a), Government Code, is amended
19 to read as follows:

20 (a) For a purchase made through competitive bidding, the
21 comptroller or other state agency making the purchase must specify
22 in the request for bids:

23 (1) the factors other than price that the comptroller
24 or agency will consider in determining which bid offers the best
25 value for the state; and

26 (2) the proposal criteria the comptroller or agency
27 will use when considering the factors described by Subdivision (1).

1 SECTION 7. Section [2155.089\(c\)](#), Government Code, is amended
2 to read as follows:

3 (c) This section does not apply to:

4 (1) an enrollment contract described by 1 T.A.C.
5 Section 391.183 as that section existed on September 1, 2015;

6 (2) a contract of the Employees Retirement System of
7 Texas except for a contract with a nongovernmental entity for
8 claims administration of a group health benefit plan under Subtitle
9 H, Title 8, Insurance Code; or

10 (3) a contract entered into by:

11 (A) the comptroller under Section [2155.061](#); ~~[or]~~

12 (B) the Department of Information Resources
13 under Section [2157.068](#); or

14 (C) a university system or an institution of
15 higher education, as those terms are defined by Section [61.003](#),
16 Education Code.

17 SECTION 8. Sections [2155.132\(a\)](#), (b), and (e), Government
18 Code, are amended to read as follows:

19 (a) A state agency is delegated the authority to purchase
20 goods and services if the purchase does not exceed \$50,000
21 [~~\$15,000~~]. If the comptroller determines that a state agency has
22 not followed the comptroller's rules or the laws related to the
23 delegated purchases, the comptroller shall report its
24 determination to the members of the state agency's governing body
25 and to the governor, lieutenant governor, speaker of the house of
26 representatives, and Legislative Budget Board.

27 (b) The comptroller by rule may delegate to a state agency

1 the authority to purchase goods and services if the purchase
2 exceeds \$50,000 [~~\$15,000~~]. In delegating purchasing authority
3 under this subsection or Section 2155.131, the comptroller shall
4 consider factors relevant to a state agency's ability to perform
5 purchasing functions, including:

6 (1) the capabilities of the agency's purchasing staff
7 and the existence of automated purchasing tools at the agency;

8 (2) the certification levels held by the agency's
9 purchasing personnel;

10 (3) the results of the comptroller's procurement
11 review audits of an agency's purchasing practices; and

12 (4) whether the agency has adopted and published
13 protest procedures consistent with those of the comptroller as part
14 of its purchasing rules.

15 (e) Competitive bidding, whether formal or informal, is
16 required for a purchase by a state agency if the purchase:

17 (1) exceeds \$10,000 [~~\$5,000~~]; and

18 (2) is made under a written contract.

19 SECTION 9. Section 2155.144, Government Code, is amended by
20 adding Subsection (o) to read as follows:

21 (o) If the Health and Human Services Commission does not
22 receive any responsive bids on a competitive solicitation for goods
23 or services for a state hospital operated by a health and human
24 services agency or a state supported living center as defined by
25 Section 531.002, Health and Safety Code, the commission after
26 making a written determination that competition is not available
27 may negotiate with and award the contract to any qualified vendor

1 who meets the requirements of the original solicitation:

2 (1) at a price consistent with the current market
3 value of the goods or services; and

4 (2) for a term not to exceed five years.

5 SECTION 10. Section 2155.264, Government Code, is amended
6 to read as follows:

7 Sec. 2155.264. AGENCY SOLICITATION OF BIDS OR PROPOSALS FOR
8 ACQUISITION OVER \$25,000 [~~\$15,000~~]. A state agency that proposes
9 to make a purchase or other acquisition that will cost more than
10 \$25,000 [~~\$15,000~~] shall solicit bids or proposals from each
11 eligible vendor on the master bidders list that serves the agency's
12 geographic region. A state agency may also solicit bids or
13 proposals through the use of on-line electronic transmission.

14 SECTION 11. Section 2157.068, Government Code, is amended
15 by amending Subsections (e-1) and (e-2) and adding Subsection (e-4)
16 to read as follows:

17 (e-1) Except as provided by Subsection (e-4), a [A] state
18 agency contracting to purchase a commodity item shall use the list
19 maintained as required by Subsection (e) as follows:

20 (1) for a contract with a value of \$50,000 or less, the
21 agency may directly award the contract to a vendor included on the
22 list without submission of a request for pricing to other vendors on
23 the list;

24 (2) for a contract with a value of more than \$50,000
25 but not more than \$1 million, the agency must submit a request for
26 pricing to at least three vendors included on the list in the
27 category to which the contract relates; and

1 (3) for a contract with a value of more than \$1 million
2 but not more than \$10 [~~\$5~~] million, the agency must submit a request
3 for pricing to at least six vendors included on the list in the
4 category to which the contract relates or all vendors on the
5 schedule if the category has fewer than six vendors.

6 (e-2) A state agency may not enter into a contract to
7 purchase a commodity item if the value of the contract exceeds \$10
8 [~~\$5~~] million.

9 (e-4) For a contract with a value of more than \$5 million but
10 not more than \$10 million, a state agency may purchase a commodity
11 item using a purchasing method designated by the comptroller under
12 Section 2157.006(a)(2).

13 SECTION 12. Section 2166.2551, Government Code, is amended
14 to read as follows:

15 Sec. 2166.2551. CONTRACT NOTIFICATION. The commission or
16 an agency whose project is exempted from all or part of this chapter
17 under Section 2166.003 shall provide written notice to the
18 Legislative Budget Board of a contract for a construction project
19 if the amount of the contract, including an amendment,
20 modification, renewal, or extension of the contract, exceeds
21 \$50,000 [~~\$14,000~~]. The notice must be on a form prescribed by the
22 Legislative Budget Board and filed not later than the 30th [~~10th~~]
23 day after the date the agency enters into the contract.

24 SECTION 13. Section 2254.006, Government Code, is amended
25 to read as follows:

26 Sec. 2254.006. CONTRACT NOTIFICATION. A state agency,
27 including an institution of higher education as defined by Section

1 61.003, Education Code, shall provide written notice to the
2 Legislative Budget Board of a contract for professional services,
3 other than a contract for physician or optometric services, if the
4 amount of the contract, including an amendment, modification,
5 renewal, or extension of the contract, exceeds \$50,000 [~~\$14,000~~].
6 The notice must be on a form prescribed by the Legislative Budget
7 Board and filed not later than the 30th [~~10th~~] day after the date
8 the agency enters into the contract.

9 SECTION 14. Subchapter A, Chapter 2254, Government Code, is
10 amended by adding Section 2254.008 to read as follows:

11 Sec. 2254.008. CONTRACT FOR PROFESSIONAL SERVICES OF
12 PHYSICIANS, OPTOMETRISTS, AND REGISTERED NURSES. (a)
13 Notwithstanding Section 2254.003, if a governmental entity is
14 procuring services provided in connection with the professional
15 employment or practice of a professional described by Section
16 2254.002(2)(B)(v), (vi), or (ix) and the number of contracts to be
17 awarded under this section is not otherwise limited, the
18 governmental entity may make the selection and award on the basis
19 of:

20 (1) the provider's agreement to payment of a set fee,
21 as a range or lump-sum amount; and

22 (2) the provider's affirmation and the governmental
23 entity's verification that the provider has the necessary
24 occupational licenses and experience.

25 (b) Notwithstanding Sections 2155.083 and 2261.051, a
26 contract awarded under this section is not subject to competitive
27 advertising and proposal evaluation requirements.

1 SECTION 15. Section 2254.0301(a), Government Code, is
2 amended to read as follows:

3 (a) A state agency shall provide written notice to the
4 Legislative Budget Board of a contract for consulting services if
5 the amount of the contract, including an amendment, modification,
6 renewal, or extension of the contract, exceeds \$50,000 [~~\$14,000~~].
7 The notice must be on a form prescribed by the Legislative Budget
8 Board and filed not later than the 30th [~~10th~~] day after the date
9 the entity enters into the contract.

10 SECTION 16. Section 2262.051, Government Code, is amended
11 by adding Subsections (i) and (j) to read as follows:

12 (i) The guide must include:

13 (1) instructions to assist a state agency in
14 identifying the agency procurements that require an additional or
15 secondary agency employee to serve as a contact for the procurement
16 and establishing procedures for notifying vendors when to contact
17 the additional or secondary agency employee;

18 (2) a general outline for the training a state agency
19 must provide to the agency's procurement evaluators related to the
20 goods and services the evaluator reviews for purchase by the
21 agency, including training on the implementation of best value
22 standards under Section 2155.074;

23 (3) for a procurement in an amount that exceeds \$20
24 million, the information a state agency must include in a contract
25 file on the evaluator for that procurement, including the reasons
26 the person was selected and the person's relevant qualifications;
27 and

1 (4) a model communications procedure for vendors and
2 agency employees, developed in collaboration with representatives
3 from vendors and state agencies.

4 (j) For a procurement in an amount that exceeds \$20 million
5 other than a contract entered into by the comptroller under Section
6 2155.061, the guide must require a state agency to notify
7 interested parties at least two months before the date the agency
8 issues the solicitation for the procurement.

9 SECTION 17. Section 264.603(a), Family Code, is amended to
10 read as follows:

11 (a) The commission shall contract with one statewide
12 organization that is exempt from federal income taxation under
13 Section 501(a), Internal Revenue Code of 1986, as an organization
14 described by Section 501(c)(3) of that code [~~and designated as a~~
15 ~~supporting organization under Section 509(a)(3) of that code,~~] and
16 that is composed of individuals or groups of individuals who have
17 expertise in the dynamics of child abuse and neglect and experience
18 in operating volunteer advocate programs to provide training,
19 technical assistance, and evaluation services for the benefit of
20 local volunteer advocate programs. The contract shall:

21 (1) include measurable goals and objectives relating
22 to the number of:

- 23 (A) volunteer advocates in the program; and
24 (B) children receiving services from the
25 program; and

26 (2) follow practices designed to ensure compliance
27 with standards referenced in the contract.

1 SECTION 18. Section 44.0331(a), Education Code, is amended
2 to read as follows:

3 (a) A school district that enters into a purchasing contract
4 valued at \$25,000 or more under Section 44.031(a)(5), under
5 Subchapter F, Chapter 271, Local Government Code, or under any
6 other cooperative purchasing program authorized for school
7 districts by law shall document a [any] contract-related fee,
8 including a [any] management fee, paid by or to the district and the
9 purpose of each fee under the contract.

10 SECTION 19. The changes in law made by this Act apply only
11 to a contract for which a state agency first advertises or otherwise
12 solicits offers, bids, proposals, qualifications, or other
13 applicable expressions of interest on or after the effective date
14 of this Act. A contract for which a state agency first advertises
15 or otherwise solicits offers, bids, proposals, qualifications, or
16 other applicable expressions of interest before the effective date
17 of this Act is governed by the law as it existed immediately before
18 the effective date of this Act, and that law is continued in effect
19 for that purpose.

20 SECTION 20. As soon as practicable after the effective date
21 of this Act, the Department of Information Resources shall adopt
22 rules necessary to implement the changes in law made by this Act.

23 SECTION 21. If before implementing any provision of this
24 Act a state agency determines that a waiver or authorization from a
25 federal agency is necessary for implementation of that provision,
26 the agency affected by the provision shall request the waiver or
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

2 SECTION 22. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 799 passed the Senate on April 19, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 29, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 799 passed the House, with amendments, on May 25, 2021, by the following vote: Yeas 145, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor